

LAW OFFICES OF
FREEHILL HOGAN & MAHAR LLP
80 PINE STREET
NEW YORK, N.Y. 10005-1759

TELEPHONE (212) 425-1900

FACSIMILE (212) 425-1901

E-MAIL: reception@freehill.com

www.freehill.com

December 30, 2022

NEW JERSEY OFFICE
103 EISENHOWER PARKWAY, SUITE 400
ROSELAND, N.J. 07068
TELEPHONE (973) 623-5514
FACSIMILE (973) 623-3813

CONNECTICUT OFFICE
246 MARGHERITA LAWN
STRATFORD, CT 06615
TELEPHONE: (203) 921-1913
FACSIMILE (203) 358-8377

OF COUNSEL
GEORGE B. FREEHILL
PATRICK J. BONNER*
MARK F. MULLER
HILARY K. JONCZAK‡

‡ ADMITTED IN FLORIDA ONLY. PRACTICE
LIMITED TO FEDERAL ADMINISTRATIVE LAW

Our ref.: 15-19/mf

WILLIAM L. JUSKA, JR.
JAMES L. ROSS*
ERIC E. LENCK
JOHN J. WALSH*
PETER J. GUTOWSKI
WAYNE D. MEEHAN*
DON P. MURNANE, JR.‡
THOMAS M. RUSSO
THOMAS M. CANEVARI†
MICHAEL FERNANDEZ*
JOHN F. KARPOUSIS*‡
WILLIAM J. PALLAS*
JUSTIN T. NASTRO*
DANIEL J. FITZGERALD*†‡
BARBARA G. CARNEVALE*
ERIC J. MATHESON*
MICHAEL D. TUCKER*‡
RYAN BYRNES*
WILLIAM H. YOST*
J. TANNER HONEA*[^]
YAAKOV U. ADLER
MICHAEL J. DEHART
MATTHEW J. PALLAY*
KATHLEEN M. O'BRIEN*
CODY KING
LAINA BORIS
VERONICA DUNLOP

* ALSO ADMITTED IN NEW JERSEY

† ALSO ADMITTED IN CONNECTICUT

‡ ALSO ADMITTED IN WASHINGTON, D.C.

° ALSO ADMITTED IN LOUISIANA

◊ ALSO ADMITTED IN PENNSYLVANIA

[^] ALSO ADMITTED IN TEXAS

Via ECF

Honorable Robert W. Lehrburger
Magistrate Judge, Southern District of New York
United States Courthouse
500 Pearl Street
New York, New York 10007

**Re: In re Hapag-Lloyd Aktiengesellschaft a/k/a Hapag-Lloyd AG,
as Owners and Operators of the M/V YANTIAN EXPRESS
19-cv-5731 (GHW)(RWL)**

Dear Judge Lehrburger:

We represent Petitioner Hapag-Lloyd AG ("Hapag" or "Petitioner") as owner and operator of the M/V Yantian Express (the "Vessel") and are writing in order to provide Your Honor with an update regarding the status of settlement discussions and to respectfully request a further adjournment of discovery for ninety (90) days.

As indicated in Petitioner's previous letters of April 5, 2022 (Dkt. 803), July 6, 2022 (Dkt. 813), and October 4, 2022 (Dkt. 833), this matter includes a complex series of claims arising from a fire casualty that occurred onboard the Vessel on January 3, 2019 impacting both the Vessel and containerized cargo carried thereon. As this Court is aware, there are approximately 4,500 cargo claims filed in the NY Limitation proceeding, and while the Vessel asserts that it is not responsible for the fire casualty, the various claimants have asserted claims, counterclaims and third-party claims for: (i) the alleged loss, damage or delay to cargo against Hapag, (ii) indemnity claims

December 30, 2022
Page 2 of 3

against Hapag by non-vessel operating carriers, and (3) claims for contribution and/or indemnity against Hapag for payments made by claimants in General Average and salvage.

As previously reported, one major impediment to finalizing the settlement of any claims has been the assessment of damages claimed by Mound Cotton on behalf of FM Global/PepsiCo/Gatorade ("Gatorade Claimants") seeking damages in the approximate amount of \$36 million due to the claimed loss of six containers of Gatorade dry mix powder (the "Gatorade Claim"). That dispute was the subject of a discovery hearing before Your Honor on November 23, 2022, resulting in the Court issuing an Order (Dkt. 865 *as modified by* Dkt. 866) compelling the Gatorade Claimants to produce documents responsive to Hapag's outstanding discovery requests.

Based upon the above Order, counsel for the Gatorade Claimants was authorized to re-engage in substantive settlement discussions with Hapag. Said discussions began shortly thereafter and it appears that the parties are making headway towards resolution with certain aspects of the Gatorade Claim, with issues involving General Average and Salvage remaining under focused discussion. As a result, counsel for the Gatorade Claimants, with the consent of Hapag, requested that Your Honor extend the deadline for their compliance with the discovery Order until January 9, 2023, which was granted by this Court. (Dkt. 868).

As previously reported, the Gatorade Claim represents approximately 45% of the total value of all claims advanced within the Limitation action and therefore has significant impact on the possible overall settlement of all claims filed in this matter. Separately, Hapag remains in close discussions with claimants represented by Hill Rivkins, who also represent approximately 45% of outstanding claims, who agree with this request for a further time extension.

Based upon the circumstances presented, Hapag respectfully requests that the current stay of discovery, with the exception of any currently outstanding discovery requests, be extended for a further 90 days, with all dates on the Scheduling Order, including all discovery and dispositive motions deadlines, similarly extended 90 days from their current expiration. Counsel are working diligently in order to reach an agreed resolution of this large, multi-faceted and complicated litigation.

If the Court approves the requested extension, the current stay would continue until April 3, 2023, and the current deadlines would similarly be extended as follows:

Court's Case Management Plan (Dkt. 143)(identified by Paragraph number)

- ¶8a - All fact discovery: July 7, 2023
- ¶8c - Requests for production/interrogatories: May 22, 2023
- ¶8d - All fact depositions: July 7, 2023
- ¶8e - Requests to admit: June 29, 2023
- ¶9c - All expert discovery: January 8, 2024
- ¶9d - Meet and confer regarding expert disclosures: June 7, 2023
- ¶12 - Notify court of intent to file summary judgment motion: January 6, 2024

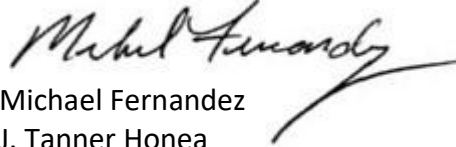
December 30, 2022
Page 3 of 3

¶13 – Submission of Joint Proposed Pre-Trial Order: February 6, 2024, or 30 days after the Court's decision on any summary judgment motions pending at that time.

This extension would also extend the NVOCCs time to move to dismiss, and, as to those NVOCCs that have not yet answered, to answer or otherwise move, from April 11, 2023 (Dkts. 804 and 814) to July 11, 2023.

All parties agree to this request for additional time or do not object, and we thank Your Honor for your continued consideration and patience in regard to this further request.

Respectfully submitted,



Michael Fernandez
J. Tanner Honea
Michael J. Dehart

Cc: All counsel of record via ECF

SO ORDERED:

Hon. Robert W. Lehrburger
United States Magistrate Judge